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18 UNITED STATES DISTRICT COURT
19 CENTRAL DISTRICT OF CALIFORNIA
20 WESTERN DIVISION

21 UNITED STATES OF AMERICA,) Civil No.
22 Plaintiff,)
23 v.) CONSENT DECREE
24)
25 AZUSA LAND RECLAMATION)
26 CO., INC., et al.,)
27 Defendants.)
28 _____)

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I. BACKGROUND

A. Pursuant to Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA”), 42 U.S.C. § 9605, the United States Environmental Protection Agency (“EPA”) placed the San Gabriel Valley Superfund Sites Areas 1-4 in Los Angeles County, California, including the Baldwin Park Operable Unit (Area 2) (the “BPOU Area”), on the National Priorities List, set forth at 40 C.F.R. Part 300, Appendix B, by publication in the Federal Register on May 8, 1984, 49 Fed. Reg. 19,480.

B. On March 31, 1994, EPA executed a Record of Decision (“ROD”) setting forth EPA’s decision on the interim remedial action to be implemented at the BPOU Area. In May 1999, EPA issued an Explanation of Significant Differences (“ESD”) relating to the ROD.

C. On February 28, 2002, EPA issued an amended Unilateral Administrative Order (“UAO”) for Remedial Design and Remedial Action (“RD/RA”) at the BPOU Area to Azusa Land Reclamation Co., Inc.; Fairchild Holding Corp.; Hartwell Corporation; Oil & Solvent Process Company; Reichhold, Inc.; and Wynn Oil Company, now known as Winco Enterprises Inc. (collectively, the “Settling Defendants”); and other Potentially Responsible Parties (“PRPs”). A copy of the UAO and the Statement of Work attached to and included as part of the UAO is attached to this Consent Decree, for reference only, as Appendix A.

D. On March 29, 2002, Settling Defendants, Huffy Corporation, and Aerojet-General Corporation, collectively known as the “Cooperating Respondents,” entered into the BPOU Project Agreement with local Water Entities, certain of which had sued the Cooperating Respondents and other PRPs pursuant to CERCLA Section 107(a), 42 U.S.C. § 9607(a), and other provisions of law. The BPOU Project Agreement provides for the implementation of the BPOU Area interim remedy as a joint cleanup and water supply project. The BPOU Project Agreement makes the Cooperating Respondents responsible for funding the design,

1 construction, installation, operation, maintenance, and management of the
2 groundwater extraction, treatment, distribution, and monitoring facilities (defined
3 in the BPOU Project Agreement as “Subprojects”) to the extent needed as part of
4 the joint cleanup and water supply project, and the Water Entities responsible for
5 the design, construction, installation, operation, maintenance, and management of
6 the Subprojects. EPA has approved four of the BPOU Subprojects as satisfying
7 the Cooperating Respondents’ obligations under the UAO.

8 E. In performing response actions at the BPOU Area, the United States has
9 incurred and will continue to incur response costs at or in connection with the
10 BPOU Area.

11 F. The United States, on behalf of the Administrator of EPA, filed a
12 complaint in this matter pursuant to Section 107 of CERCLA, 42 U.S.C. § 9607,
13 seeking reimbursement of response costs incurred or to be incurred for response
14 actions taken at or in connection with the release or threatened release of hazardous
15 substances at the BPOU Area, together with accrued interest.

16 G. The Settling Defendants that have entered into this Consent Decree do
17 not admit any liability to Plaintiff arising out of the transactions or occurrences
18 alleged in the complaint, nor do they acknowledge that the release or threatened
19 release of hazardous substance(s) at or from the BPOU Area constitutes an
20 imminent or substantial endangerment to the public health or welfare or the
21 environment. Except as otherwise provided in the Federal Rules of Evidence, the
22 Settling Defendants’ participation in this settlement process and entry into this
23 Consent Decree shall not be considered as an admission of liability for any
24 purpose.

25 H. The United States and Settling Defendants desire to resolve Settling
26 Defendants’ alleged civil liability to the United States for Past Response Costs and
27 Oversight Costs, as those terms are defined herein, without further litigation and
28 without admission or adjudication of any issue of fact or law. The purpose of this

1 Consent Decree is to resolve Settling Defendants' liability to the United States for
2 Past Response Costs and Oversight Costs by providing for Settling Defendants'
3 payment of a share of Past Response Costs, and for their continued compensation
4 of the United States for a share of Oversight Costs. Except as otherwise settled by
5 this Consent Decree, this Decree does not address issues with respect to Settling
6 Defendants' obligations or continuing performance under the UAO.

7 I. The United States and Settling Defendants agree, and this Court by
8 entering this Consent Decree finds, that this Consent Decree has been negotiated
9 by the Parties in good faith, that settlement of this matter will avoid prolonged and
10 complicated litigation between the Parties, and that this Consent Decree is fair,
11 reasonable, and in the public interest.

12 THEREFORE, with the consent of the Parties to this Decree, it is
13 ORDERED, ADJUDGED, AND DECREED:

14 **II. JURISDICTION**

15 1. This Court has jurisdiction over the subject matter of this action pursuant
16 to 28 U.S.C. §§ 1331 and 1345 and 42 U.S.C. §§ 9607 and 9613(b) and also has
17 personal jurisdiction over Settling Defendants. Solely for the purposes of this
18 Consent Decree and the underlying complaint, Settling Defendants waive all
19 objections and defenses that they may have to jurisdiction of the Court or to venue
20 in this District. Settling Defendants shall not challenge the terms of this Consent
21 Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

22 **III. PARTIES BOUND**

23 2. This Consent Decree is binding upon the United States, and upon Settling
24 Defendants and their respective successors and assigns. Any change in ownership
25 or corporate or other legal status, including, but not limited to, any transfer of
26 assets or real or personal property, shall in no way alter the status or
27 responsibilities of Settling Defendants under this Consent Decree.

28 **IV. DEFINITIONS**

1 3. Unless otherwise expressly provided herein, terms used in this Consent
2 Decree that are defined in CERCLA or in regulations promulgated under CERCLA
3 shall have the meanings assigned to them in CERCLA or in such regulations.
4 Whenever terms listed below are used in this Consent Decree, the following
5 definitions shall apply:

6 a. "Baldwin Park 09M5 Special Account" shall mean one of the
7 special accounts established for the BPOU Area by EPA pursuant to Section
8 122(b)(3) of CERCLA, 42 U.S.C. § 9622(b)(3).

9 b. "BPOU Area" shall mean the Baldwin Park Operable Unit (Area 2)
10 of the San Gabriel Valley Superfund Sites, Areas 1-4, in and near the cities of
11 Azusa, Irwindale, and Baldwin Park, in Los Angeles County, California. The
12 BPOU Area is depicted generally on the map attached as Appendix B.

13 c. "BPOU Project Agreement" shall mean the agreement dated March
14 29, 2002, and declared effective as of May 9, 2002, by and between the "Water
15 Entities" and the "Cooperating Respondents."

16 d. "CERCLA" shall mean the Comprehensive Environmental
17 Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C.
18 § 9601, *et seq.*

19 e. "Consent Decree" shall mean this Consent Decree only. The
20 appendices attached hereto are included for reference only and shall not constitute
21 a part of this Consent Decree.

22 f. "Cooperating Respondents" shall mean Aerojet-General
23 Corporation; Azusa Land Reclamation Co., Inc.; Fairchild Holding Corp.; Hartwell
24 Corporation; Huffy Corporation; Oil & Solvent Process Company; Reichhold, Inc.;
25 and Wynn Oil Company, now known as Winco Enterprises Inc.

26 g. "Day" shall mean a calendar day. In computing any period of time
27 under this Consent Decree, where the last day would fall on a Saturday, Sunday, or
28 federal or California State holiday, the period shall run until the close of business

1 of the next working day.

2 h. "Defined BPOU Project Work" shall mean various BPOU
3 planning, reporting, design, construction, operation and maintenance, monitoring,
4 and evaluation activities completed before May 8, 2017, to implement planning or
5 design documents approved by EPA before May 31, 2005. Defined BPOU Project
6 Work shall include:

7 (1) Design and construction of the following four Subprojects:

8 (i) the La Puente Valley County Water District, San Gabriel
9 Valley Water Company B-6, and Valley County Water District
10 Subprojects as documented in Remedial Action Reports
11 completed for the three Subprojects. The three Remedial
12 Action Reports are dated September 2003, September 2004, and
13 March 2005, and were approved by EPA on September 30,
14 2003, September 30, 2004, and March 31, 2005, respectively;
15 and

16 (ii) the San Gabriel Valley Water Company B-5 ("B-5")
17 Subproject. EPA approved the design for the B-5 Subproject in
18 a letter dated September 29, 2004. Construction is expected to
19 continue into 2006;

20 (2) Operation and maintenance activities related to the four
21 Subprojects in subparagraph (1) until May 8, 2017;

22 (3) Preparation of, and activities implemented to comply with, the
23 January 30, 2004 Revised Final Performance Standards Evaluation
24 Plan submitted in accordance with the EPA approval letter dated
25 December 10, 2003.

26 i. "DOJ" shall mean the United States Department of Justice and any
27 of its successor departments, agencies, or instrumentalities.

28 j. "Effective Date" shall be the effective date of this Consent Decree

as provided in Paragraph 33.

k. “EPA” shall mean the United States Environmental Protection Agency and any of its successor departments, agencies or instrumentalities.

l. “EPA Hazardous Substance Superfund” shall mean the Hazardous Substance Superfund established by the Internal Revenue Code, 26 U.S.C. § 9507.

m. “Explanation of Significant Differences” or “ESD” shall mean the Explanation of Significant Differences relating to the BPOU Area issued by EPA in May 1999. The ESD is attached as Appendix D.

n. “Interest” shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year.

o. “National Contingency Plan” or “NCP” shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300, and any amendments thereto.

p. “Oversight Costs” shall mean all costs, including, but not limited to, direct and indirect costs, that are not inconsistent with the NCP and that are incurred by the United States at or in connection with the BPOU Area on or after July 1, 2004, until and including May 8, 2017 (the remaining term of the BPOU Project Agreement) in: reviewing, verifying or developing the plans, reports, and other documents submitted or conducted pursuant to the UAO, this Consent Decree, or the BPOU Project Agreement; reviewing or verifying the Work conducted pursuant to the UAO or the BPOU Project Agreement; conducting response activities pursuant to Section XIV (EPA Review of Submissions) of the UAO, except for Paragraph 87(d) of the amended UAO issued on February 28,

2002, as it relates to EPA's performance of all or part of the response action; performing periodic remedial action reviews under Section XI (EPA Periodic Review) of the UAO or Section 121 of CERCLA, 42 U.S.C. § 9621; or implementing, overseeing, or enforcing this Consent Decree against Settling Defendants, including, but not limited to, payroll costs, contractor costs, travel costs, laboratory costs, costs of attorney time, costs of obtaining access to the BPOU Area, and Interest on all such costs accrued from the date payment of a specific amount is due under this Consent Decree.

q. "Paragraph" shall mean a portion of this Consent Decree identified by an Arabic numeral or an upper or lower case letter.

r. "Parties" shall mean the United States and Settling Defendants.

s. "Past Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs, that EPA or DOJ on behalf of EPA has paid or incurred at or in connection with the BPOU Area through June 30, 2004, including all basin-wide costs to the extent that such costs are allocated to the BPOU, plus accrued Interest on all such costs through such date.

t. "Plaintiff" shall mean the United States.

u. "ROD" shall mean the EPA Record of Decision and all attachments thereto relating to the interim remedy for the BPOU Area, which was signed by the delegate of the Regional Administrator, EPA Region 9 on March 31, 1994. The ROD is attached as Appendix C.

v. "Section" shall mean a portion of this Consent Decree identified by a Roman numeral.

w. "Settling Defendants" shall mean Azusa Land Reclamation Co., Inc., which was erroneously identified in the UAO as: (i) "Azusa Gas Systems (formerly known as Azusa Land Reclamation Co.)," (ii) "BFI/Azusa Gas Systems," and (iii) "Azusa Gas Systems (BFI); Fairchild Holding Corp.; Hartwell Corporation; Oil & Solvent Process Company; Reichhold, Inc., formerly known as

1 Reichhold Chemicals, Inc.; and Winco Enterprises Inc., formerly known as Wynn
2 Oil Company. With respect to each Settling Defendant entity, for purposes of
3 Paragraphs 16, 17, 18, and 21, Settling Defendants shall also mean:

4 (i) the predecessors of such entities;

5 (ii) the subsidiaries of such entities;

6 (iii) any shareholder, officer, director, or employee, acting in their
7 capacities as such, of each Settling Defendant or their predecessors or
8 subsidiaries; and

9 (iv) with respect to Settling Defendant Azusa Land Reclamation Co.,
10 Inc. only, Browning Ferris Industries of California, Inc.;

11 but only to the extent that any such person or entity within categories (i), (ii), (iii)
12 or (iv) above has no independent liability for the BPOU Area other than the
13 liability derived from that person's or entity's relationship to, or affiliation with,
14 the Settling Defendant, as specified.

15 x. "Site" shall mean the San Gabriel Valley Superfund Sites, Areas 1-
16 4, in Los Angeles County, California.

17 y. "Site 0927 San Gabriel Valley/Baldwin Park Special Account"
18 shall mean one of the special accounts established for the BPOU Area by EPA
19 pursuant to Section 122(b)(3) of CERCLA, 42 U.S.C. § 9622(b)(3).

20 z. "Unilateral Administrative Order" or "UAO" shall mean EPA's
21 June 30, 2000 Unilateral Administrative Order No. 2000-13 (as amended on
22 February 28, 2002), including the Statement of Work attached thereto, issued
23 under Section 106 of CERCLA, 42 U.S.C. § 9606, and Section 7003 of RCRA, 42
24 U.S.C. § 6973, relating to the BPOU Area. The UAO is attached as Appendix A.

25 aa. "United States" shall mean the United States of America,
26 including its departments, agencies and instrumentalities.

27 bb. "Water Entities" shall mean the Main San Gabriel Basin
28 Watermaster, the San Gabriel Basin Water Quality Authority, La Puente Valley

County Water District, San Gabriel Valley Water Company, Suburban Water Systems, California Domestic Water Company, and Valley County Water District, and, only as to La Puente Valley County Water District, San Gabriel Valley Water Company, Suburban Water Systems, California Domestic Water Company, and Valley County Water District, their respective successors.

cc. "Work" shall mean all activities required to be performed to implement the ROD, as supplemented by the ESD, at or in connection with the BPOU Area.

V. PAYMENT OF RESPONSE COSTS

4. Payment of Past Response Costs to EPA. Within 30 days of receipt of written notice from the United States that it has received all signature pages from the Settling Defendants, Settling Defendants shall deposit \$2,900,000 into an escrow account bearing interest on commercially reasonable terms, in a federally-chartered bank. If the Consent Decree is not entered by the Court, and the time for any appeal of that decision has run or if the Court's denial of entry is upheld on appeal, the monies placed in escrow, together with accrued interest thereon, shall be returned to Settling Defendants. If the Consent Decree is entered by the Court, Settling Defendants shall, within 10 days after written notification from the United States that the Consent Decree has been entered, cause the monies placed in escrow, together with accrued interest thereon, to be paid to EPA in accordance with the requirements of Paragraph 5.

5. Payment of Past Response Costs shall be made by FedWire Electronic Funds Transfer ("EFT") to the U.S. Department of Justice account in accordance with EFT instructions to be provided to Settling Defendants by the Financial Litigation Unit of the U.S. Attorney's Office in the Central District of California following lodging of the Consent Decree.

6. At the time of payment to the U.S. Department of Justice pursuant to Paragraph 5, Settling Defendants shall also send notice that payment has been

made to EPA and DOJ in accordance with Section XIV (Notices and Submissions). Such notice shall reference EPA Region 9, Site Spill Numbers 09M5 and 0927, DOJ case number 90-11-2-354/17, and the civil action number.

7. Of the total amount to be paid pursuant to Paragraph 4, \$1,857,966 shall be deposited in the Baldwin Park 09M5 Special Account within the EPA Hazardous Substance Superfund, and the balance of the amount (\$1,042,034 and any accumulated interest) shall be deposited in the Site 0927 San Gabriel Valley/Baldwin Park Special Account within the EPA Hazardous Substance Superfund, to be retained and used to conduct or finance response actions at or in connection with the BPOU Area, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

8. Payment of Oversight Costs to EPA. Settling Defendants shall reimburse the United States for a total of 20 percent of all Oversight Costs. Periodically, the United States will send Settling Defendants a bill requiring payment that includes an accounting of Oversight Costs. This accounting will include a standard Regionally-prepared cost summary, which includes direct and indirect costs incurred by EPA and its contractors, and a DOJ cost summary that reflects costs incurred by DOJ and its contractors, if any. Settling Defendants shall make all payments within 60 days of Settling Defendants' receipt of each bill requiring payment, except as otherwise provided in Paragraph 10. EPA may, in its sole discretion, extend the time period for payment. The Settling Defendants shall make all payments required by this Paragraph in the form of a certified or cashier's check or checks made payable to "EPA Hazardous Substance Superfund" or an EFT to the EPA Hazardous Substance Superfund account in accordance with EFT instructions to be provided to Settling Defendants by EPA. The payments shall reference the name and address of the parties making payment, EPA Region 9 and Site Spill Number 09M5, DOJ case number 90-11-2-354/17, and the civil action number. If payment is made by check, the Settling Defendants shall forward the

certified or cashier's check(s) to:

EPA - Cincinnati Accounting Operations
Attn: Region 9 Receivables
P.O. Box 371099M
Pittsburgh, PA 15251

Settling Defendants shall send copies of the check(s) or notice of the EFT payment to DOJ, EPA, and the Regional Financial Management Officer, in accordance with Section XIV (Notices and Submissions). The total amount to be paid pursuant to Paragraph 8 shall be deposited in the Baldwin Park 09M5 Special Account within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with the BPOU Area, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

9. Except as otherwise settled by this Consent Decree, the Parties agree that this Consent Decree does not address Settling Defendants' obligations or continued performance under the UAO.

10. Dispute Resolution for Oversight Costs.

a. Standard. Settling Defendants may contest payment of any Oversight Costs billed by the United States if they determine that the United States has made an accounting error or has included costs outside the scope of this Consent Decree, or if they allege that a cost item that is included represents costs that are inconsistent with the NCP.

b. Procedures. The dispute resolution procedures set forth in this Paragraph shall be the exclusive mechanism for resolving disputes regarding the Settling Defendants' obligation to reimburse the United States for its Oversight Costs.

c. Dispute Resolution. The dispute resolution mechanism described in this Paragraph is only available if the Settling Defendants comply with the following conditions:

(1) Notice. Any objection to the payment of Oversight Costs shall be

1 made in writing within 60 days of receipt of the bill and accompanying accounting
2 of costs and must be sent to the United States in accordance with Section XIV
3 (Notices and Submissions). EPA may, in its sole discretion, extend the time period
4 for payment. Any such objection (hereinafter referred to as the “Notice of
5 Objection”) shall specifically identify the contested Oversight Costs and the basis
6 for objection.

7 (2) Payment of Undisputed Amounts. In the event of an objection to
8 some but not all Oversight Costs, the Settling Defendants shall, within the 60-day
9 period, pay all uncontested Oversight Costs to the United States in the manner
10 described in Paragraph 8.

11 (3) Escrow for Disputed Amounts. Within 60 days of receipt of a bill
12 for Oversight Costs that are disputed, the Settling Defendants shall establish an
13 interest-bearing escrow account in a federally-insured bank and remit to that
14 escrow account funds equivalent to the amount of the contested Oversight Costs.
15 The Settling Defendants shall send to the United States, as provided in Section
16 XIV (Notices and Submissions), a copy of the correspondence that establishes and
17 funds the escrow account, including, but not limited to, information containing the
18 identity of the bank and bank account under which the escrow account is
19 established as well as a bank statement showing the initial balance of the escrow
20 account.

21 d. Informal Dispute Resolution. Any dispute with respect to
22 Oversight Costs shall in the first instance be the subject of informal negotiations
23 between the United States and the Settling Defendants.

24 e. Formal Dispute Resolution.

25 (1) Initiation. If the dispute is not resolved by informal dispute
26 resolution, either party may commence formal dispute resolution by sending a
27 Notice of Formal Dispute Resolution to the other party to the dispute. The Notice
28 of Formal Dispute Resolution shall be accompanied by a written Statement of

1 Position by the party who serves the Notice, stating the basis of that party's
2 position and citing all factual data, analysis, opinion or other information on which
3 that party relies to support its position. The opposing party shall have 30 days in
4 which to serve a Response setting forth the same information supporting its
5 position.

6 (2) Administrative Record and Decision. EPA shall maintain an
7 administrative record of any dispute as to Oversight Costs for which formal dispute
8 resolution has been initiated. The administrative record shall include the disputed
9 bill and all cost documentation sent by EPA to the Settling Defendants, the Notice
10 of Objection served by Settling Defendants, the Notice of Formal Dispute
11 Resolution and accompanying Statement of Position, the opposing party's
12 Response, and any other documents or information sent to EPA by Settling
13 Defendants for inclusion in the record or relied on by EPA in reaching an
14 administrative resolution of the dispute. The Director of the Superfund Division,
15 EPA Region IX, will issue a final administrative decision determining whether the
16 disputed Oversight Costs, or any part of them, shall be disallowed as inconsistent
17 with the NCP, as the result of an accounting error, or as costs outside the scope of
18 this Consent Decree.

19 (3) Judicial Appeal. The Settling Defendants may appeal EPA's
20 administrative decision made pursuant to the preceding subparagraph to this Court
21 within 30 days of their receipt of EPA's decision. The Court's review of EPA's
22 decision shall be limited to EPA's administrative record except to the extent that
23 Settling Defendants establish that supplemental materials may be considered by the
24 Court under CERCLA and applicable principles of administrative law. Judicial
25 review of any dispute under this subparagraph shall be governed by CERCLA and
26 applicable principles of administrative law.

27 f. Payment Following Dispute Resolution. Payments determined to
28 be owing to the United States following dispute resolution shall be paid from the

escrow account (including accrued Interest on the amounts owed) to the United States in the manner described in Paragraph 8 within 10 days after receipt of the Court's decision or, if EPA's final administrative decision is not timely appealed, within 40 days after EPA's decision. To the extent that any amounts are determined not to be owed, the Settling Defendants shall be disbursed the remainder of the escrow account.

VI. FAILURE TO COMPLY WITH CONSENT DECREE

11. Interest on Late Payments. If Settling Defendants fail to make payment to the United States under Paragraph 4 (Payment of Past Response Costs to EPA) or Paragraph 8 (Payment of Oversight Costs to EPA), Interest shall accrue on the unpaid balance from the due date through the date of payment.

12. Stipulated Penalty.

a. If any payment to the United States due under Paragraph 4 is not paid by the required date, Settling Defendants shall be in violation of this Consent Decree and shall pay to EPA, as a stipulated penalty, in addition to the Interest required by Paragraph 11, \$1,000 per day that such payment is late.

b. If any amounts due under Paragraph 8 are not either paid by the required date or paid into escrow in accordance with Paragraph 10(c)(3), the Settling Defendants shall pay to EPA, in addition to the Interest required in Paragraph 11, the following stipulated penalties, which shall accrue per violation per day:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$500	1 st through 30 th day
\$1,000	31 st day and beyond

c. Stipulated penalties are due and payable within 30 days after the date of the demand by EPA for payment of the penalties. All payments to EPA under this Paragraph shall be identified as "stipulated penalties" and shall be made by certified or cashier's check made payable to "EPA

1 Hazardous Substance Superfund.” The check, or a letter accompanying the
2 check, shall reference the name and address of the party making payment, the
3 Site name, EPA Region 9 and Site Spill Number 09M5, DOJ Case Number
4 90-11-2-354/17, and the civil action number, and shall be sent to:

5 EPA - Cincinnati Accounting Operations
6 Attn: Region 9 Receivables
7 P.O. Box 371099M
Pittsburgh, PA 15251

8 d. At the time of payment of any stipulated penalties to the
9 United States, Settling Defendants shall send copies of check(s), and any
10 accompanying transmittal letter(s), to DOJ, EPA, and the Regional Financial
11 Management Officer as provided in Section XIV (Notices and Submissions)
12 of this Consent Decree. Such notice shall reference the EPA Region and Site
13 Spill Number 09M5, DOJ Case Number 90-11-2-354/17, and the civil action
14 number.

15 e. Stipulated penalties shall accrue as provided in this
16 Paragraph regardless of whether EPA has notified Settling Defendants of the
17 violation or made a demand for payment, but need only be paid upon
18 demand. All penalties shall begin to accrue on the day after payment is due
19 and shall continue to accrue through the date of payment. Nothing herein
20 shall prevent the simultaneous accrual of separate penalties for separate
21 violations of this Consent Decree.

22 13. If the United States brings an action to enforce this Consent
23 Decree, Settling Defendants shall reimburse the United States for all costs of
24 such action, including, but not limited to, costs of attorney time.

25 14. Payments made under this Section shall be in addition to any other
26 remedies or sanctions available to Plaintiff by virtue of Settling Defendants’
27 failure to comply with the requirements of this Consent Decree.

28 15. Notwithstanding any other provision of this Section, the United

1 States may, in its unreviewable discretion, waive payment of any portion of
2 the stipulated penalties that have accrued to the United States pursuant to this
3 Consent Decree. Payment of stipulated penalties shall not excuse Settling
4 Defendants from payment as required by Section V or from performance of
5 any other requirements of this Consent Decree.

6 **VII. COVENANTS NOT TO SUE BY PLAINTIFF**

7 16. Covenants Not to Sue. Except as specifically provided in Section
8 VIII (Reservations of Rights by Plaintiff), the United States covenants not to
9 sue or to take administrative action against Settling Defendants pursuant to
10 Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), to recover Past Response
11 Costs or Oversight Costs as defined in this Consent Decree. These covenants
12 not to sue or to take administrative action (1) are conditioned upon the
13 satisfactory performance by Settling Defendants of their obligations under this
14 Consent Decree, (2) do not extend to any other person, and (3) shall take
15 effect upon receipt by EPA of all payments required by Paragraph 4 and any
16 related amount due under Section VI (Failure to Comply with Consent
17 Decree), Paragraphs 11 and 12, on account of late payment of Past Response
18 Costs.

19 **VIII. RESERVATIONS OF RIGHTS BY PLAINTIFF**

20 17. The United States reserves, and this Consent Decree is without
21 prejudice to, all rights against Settling Defendants with respect to all matters
22 not expressly included within the Covenants Not to Sue in Paragraph 16.
23 Notwithstanding any other provision of this Consent Decree, the United States
24 reserves all rights against Settling Defendants with respect to:

25 a. liability for failure of Settling Defendants to meet a
26 requirement of this Consent Decree;

27 b. liability for costs incurred or to be incurred by the United
28 States that are not within the definitions of Past Response Costs or Oversight

Costs;

c. liability for injunctive relief, any administrative action (except to the extent settled in this Consent Decree), fines, and/or punitive damages under Sections 106 or 107(c)(3) of CERCLA, 42 U.S.C. §§ 9606, 9607(c)(3);

d. liability for any and all response costs incurred by the United States (that are not within the definitions of Past Response Costs or Oversight Costs) that are related to Settling Defendants' violation of, or failure or refusal to comply with, the UAO;

e. liability for additional operable units at the Site, or a final response action, including, but not limited to, the final Record of Decision for the BPOU Area;

f. criminal liability; and

g. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments.

IX. COVENANTS NOT TO SUE AND RESERVATION OF RIGHTS BY SETTLING DEFENDANTS

18. Covenants Not to Sue; Reservation of Rights.

a. Settling Defendants covenant not to sue and agree not to assert any claims or causes of action against the United States or its contractors or employees, with respect to Past Response Costs, Oversight Costs, or this Consent Decree, including, but not limited to:

i. any direct or indirect claim for reimbursement from the Hazardous Substance Superfund based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;

ii. any claim for Past Response Costs or Oversight Costs arising out of the response actions at the Site for which the Past Response

1 Costs or Oversight Costs were incurred, including any claim under the United
2 States Constitution, the Constitution of the State of California, the Tucker Act,
3 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as
4 amended, or at common law; or

5 iii. any claim against the United States pursuant to
6 Sections 107 or 113 of CERCLA, 42 U.S.C. §§ 9607, 9613, relating to Past
7 Response Costs or Oversight Costs.

8 b. With respect to the Defined BPOU Project Work, Settling
9 Defendants covenant not to sue and agree not to assert any direct or indirect
10 claim for reimbursement from the Hazardous Substance Superfund based on
11 Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C.
12 §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law.

13 c. Except as provided in Paragraph 18.b., Settling Defendants
14 reserve the right to sue or assert claims or defenses as to Work, including any
15 Defined BPOU Project Work, and the United States reserves all defenses to
16 such claims.

17 19. Nothing in this Consent Decree shall be deemed to constitute
18 approval or preauthorization of a claim within the meaning of Section 111 of
19 CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

20 **X. EFFECT OF SETTLEMENT/CONTRIBUTION PROTECTION**

21 20. Except as provided in Paragraph 2 with respect to successors and
22 assigns and as provided in the definition of Settling Defendants with respect to
23 Paragraphs 16, 17, 18, and 21, nothing in this Consent Decree shall be
24 construed to create any rights in, or grant any cause of action to, any person
25 not a Party to this Consent Decree. The Parties expressly reserve any and all
26 rights (including, but not limited to, any right to contribution), defenses,
27 claims, demands, and causes of action that they may have with respect to any
28 matter, transaction, or occurrence relating in any way to the Site against any

1 person not a Party hereto.

2 21. The Parties agree, and by entering this Consent Decree this Court
3 finds, that Settling Defendants are entitled, as of the date of entry of this
4 Consent Decree, to protection from contribution actions or claims as provided
5 by Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), for “matters
6 addressed” in this Consent Decree. The “matters addressed” in this Consent
7 Decree are Past Response Costs and Oversight Costs as defined in this
8 Consent Decree.

9 22. Settling Defendants agree that, with respect to any suit or claim for
10 contribution brought by them for matters related to this Consent Decree, they
11 will notify EPA and DOJ in writing no later than 60 days prior to the initiation
12 of such suit or claim. Settling Defendants also agree that, with respect to any
13 suit or claim for contribution brought against them for matters related to this
14 Consent Decree, they will notify EPA and DOJ in writing within 10 days of
15 service of the complaint or claim upon them. In addition, Settling Defendants
16 shall notify EPA and DOJ within 10 days of service or receipt of any Motion
17 for Summary Judgment, and within 10 days of receipt of any order from a
18 court setting a case for trial, for matters related to this Consent Decree.

19 23. In any subsequent administrative or judicial proceeding initiated by
20 the United States for injunctive relief, recovery of response costs, or other
21 relief relating to the Site, Settling Defendants shall not assert, and may not
22 maintain, any defense or claim based upon the principles of waiver, *res*
23 *judicata*, collateral estoppel, issue preclusion, claim-splitting, or other
24 defenses based upon any contention that the claims raised by the United States
25 in the subsequent proceeding were or should have been brought in the instant
26 case; provided, however, that nothing in this Paragraph affects the
27 enforceability of the Covenants Not to Sue by Plaintiff set forth in Section
28 VII.

1 **XI. ACCESS**

2 24. If the Site, or any other property where access is needed to
3 implement response activities at the Site, is owned or controlled by any of the
4 Settling Defendants, such Settling Defendants shall, commencing on the date
5 of lodging of this Consent Decree, provide the United States and its
6 representatives, including EPA and contractors, with access at all reasonable
7 times to the Site, or to such other property, for the purpose of conducting any
8 response activity related to the Site, including, but not limited to, the
9 following activities:

- 10 1. Monitoring, investigation, removal, remedial or other
11 activities at the Site;
12 2. Verifying any data or information submitted to the
13 United States;
14 3. Conducting investigations relating to contamination at
15 or near the Site;
16 4. Obtaining samples;
17 5. Assessing the need for, planning, or implementing
18 response actions at or near the Site;
19 6. Inspecting and copying records, operating logs,
20 contracts, or other documents maintained or generated by Settling Defendants
21 or their agents, consistent with Section XII (Access to Information); and
22 7. Assessing Settling Defendants' compliance with this
23 Agreement.

24 25. Notwithstanding any provision of this Agreement, EPA retains all
25 of its access authorities and rights, as well as all of its rights to require
26 land/water use restrictions, including enforcement authorities related thereto,
27 under CERCLA, RCRA, and any other applicable statutes or regulations.

28 **XII. ACCESS TO INFORMATION**

1 26. Until May 8, 2017, Settling Defendants shall provide to EPA, upon
2 request, copies of all records, reports, or information (hereinafter referred to as
3 “records”) within their possession or control or that of their contractors or
4 agents relating to activities at the Site or to the implementation of this Consent
5 Decree, including, but not limited to, sampling, analysis, chain of custody
6 records, manifests, trucking logs, receipts, reports, sample traffic routing,
7 correspondence, or other documents or information related to the Site.

8 27. Confidential Business Information and Privileged Documents.

9 a. Settling Defendants may assert business confidentiality claims
10 covering part or all of the records submitted to Plaintiff under this Consent
11 Decree to the extent permitted by and in accordance with Section 104(e)(7) of
12 CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. § 2.203(b). Records
13 determined to be confidential by EPA will be accorded the protection
14 specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality
15 accompanies records when they are submitted to EPA, or if EPA has notified
16 Settling Defendants that the records are not confidential under the standards of
17 Section 104(e)(7) of CERCLA or 40 C.F.R. Part 2, Subpart B, the public may
18 be given access to such records without further notice to Settling Defendants.

19 b. Settling Defendants may assert that certain records are
20 privileged under the attorney-client privilege or any other privilege recognized
21 by federal law. If Settling Defendants assert such a privilege in lieu of
22 providing records, they shall provide Plaintiff with the following: 1) the title
23 of the record; 2) the date of the record; 3) the name, title, affiliation (*e.g.*,
24 company or firm), and address of the author of the record; 4) the name and
25 title of each addressee and recipient; 5) a description of the subject of the
26 record; and 6) the privilege asserted. If a claim of privilege applies only to a
27 portion of a record, the record shall be provided to Plaintiff in redacted form
28 to mask the privileged information only. Settling Defendants shall retain all

1 records that they claim to be privileged until the United States has had a
2 reasonable opportunity to dispute the privilege claim and any such dispute has
3 been resolved in the Settling Defendants' favor. However, no records created
4 or generated pursuant to the requirements of this or any other settlement with
5 EPA pertaining to the Site shall be withheld on the grounds that they are
6 privileged.

7 28. No claim of business confidentiality shall be made with respect to
8 any information or data within the scope of Section 104(e)(7)(F) of CERCLA,
9 42 U.S.C. § 9604(e)(7)(F), including, but not limited to, all sampling,
10 analytical, monitoring, hydrogeologic, scientific, chemical, or engineering
11 data, or any other documents or information evidencing conditions at or
12 around the Site.

13 **XIII. RETENTION OF RECORDS**

14 29. Until May 8, 2017, Settling Defendants shall preserve and retain all
15 records now in their possession or control, or which come into their
16 possession or control, that relate in any manner to response actions taken at
17 the Site or the liability of any person under CERCLA with respect to the Site,
18 regardless of any corporate retention policy to the contrary.

19 30. After the conclusion of the document retention period described in
20 the preceding Paragraph, Settling Defendants shall notify EPA and DOJ at
21 least 90 days prior to the destruction of any such records, and, upon request by
22 EPA or DOJ, Settling Defendants shall deliver any such records to EPA.
23 Settling Defendants may assert that certain records are privileged under the
24 attorney-client privilege or any other privilege recognized by federal law. If
25 Settling Defendants assert such a privilege, they shall provide Plaintiff with
26 the following: 1) the title of the record; 2) the date of the record; 3) the name,
27 title, affiliation (*e.g.*, company or firm), and address of the author of the
28 record; 4) the name and title of each addressee and recipient; 5) a description

1 of the subject of the record; and 6) the privilege asserted. If a claim of
2 privilege applies only to a portion of a record, the record shall be provided to
3 Plaintiff in redacted form to mask the privileged information only. Settling
4 Defendants shall retain all records that they claim to be privileged until the
5 United States has had a reasonable opportunity to dispute the privilege claim
6 and any such dispute has been resolved in the Settling Defendants' favor.
7 However, no records created or generated pursuant to the requirements of this
8 or any other settlement with EPA pertaining to the Site shall be withheld on
9 the grounds that they are privileged.

10 31. Each Settling Defendant hereby certifies that, to the best of its
11 knowledge and belief, after thorough inquiry, it has not altered, mutilated,
12 discarded, destroyed or otherwise disposed of any records, reports, or
13 information relating to its potential liability regarding the Site since
14 notification of potential liability by the United States or the filing of suit
15 against it regarding the Site and that it has fully complied with any and all
16 EPA requests for information pursuant to Sections 104(e) and 122(e) of
17 CERCLA, 42 U.S.C. §§ 9604(e), 9622(e), and Section 3007 of RCRA, 42
18 U.S.C. § 6972.

19 **XIV. NOTICES AND SUBMISSIONS**

20 32. Whenever, under the terms of this Consent Decree, notice is
21 required to be given or a document is required to be sent by one party to
22 another, it shall be directed to the individuals at the addresses specified below,
23 unless those individuals or their successors give notice of a change to the
24 other Parties in writing. Written notice as specified herein shall constitute
25 complete satisfaction of any written notice requirement of the Consent Decree
26 with respect to the United States, EPA, DOJ, and Settling Defendants.

27 As to the United States:

28 As to DOJ:

1 Chief, Environmental Enforcement Section
2 Environment and Natural Resources Division
3 U.S. Department of Justice
4 P.O. Box 7611, Ben Franklin Station
5 Washington, D.C. 20044
6 Re: DJ # 90-11-2-354/17

7 and
8 Robert D. Mullaney
9 Trial Attorney
10 Environmental Enforcement Section
11 U.S. Department of Justice
12 301 Howard Street, Suite 1050
13 San Francisco, CA 94105

14 As to EPA:

15 Lewis C. Maldonado, ORC-3
16 Assistant Regional Counsel
17 United States Environmental Protection Agency
18 75 Hawthorne Street
19 San Francisco, CA 94105

20 and
21 Wayne Praskins, SFD-7-3
22 EPA Project Coordinator
23 United States Environmental Protection Agency
24 75 Hawthorne Street
25 San Francisco, CA 94105

26 As to the Regional Financial Management Officer:

27 Joe Schmidt, PMD-5
28 United States Environmental Protection Agency
75 Hawthorne Street
San Francisco, CA 94105

As to the Settling Defendants:

When notice is given, it shall be given to each Settling Defendant at the address specified on each signature page.

XV. EFFECTIVE DATE

33. The effective date of this Consent Decree shall be the date upon which this Consent Decree is entered by the Court, except as otherwise provided herein.

XVI. RETENTION OF JURISDICTION

34. This Court shall retain jurisdiction over this matter for the purpose of interpreting and enforcing the terms of this Consent Decree.

1 **XVII. INTEGRATION/APPENDICES**

2 35. This Consent Decree constitutes the final, complete and exclusive
3 agreement and understanding among the Parties with respect to the settlement
4 embodied in this Consent Decree. The Parties acknowledge that there are no
5 representations, agreements or understandings relating to the settlement other
6 than those expressly contained in this Consent Decree. The following
7 appendices are attached to this Consent Decree for reference only:

8 “Appendix A” is a copy of the UAO and the SOW attached to and
9 included as part of the UAO;

10 “Appendix B” is a map that generally depicts the BPOU Area;

11 “Appendix C” is a copy of the ROD; and

12 “Appendix D” is a copy of the ESD.

13 **XVIII. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT**

14 36. This Consent Decree shall be lodged with the Court for a period of
15 not less than 30 days for public notice and comment. The United States
16 reserves the right to withdraw or withhold its consent if the comments
17 regarding the Consent Decree disclose facts or considerations indicating that
18 this Consent Decree is inappropriate, improper, or inadequate. Settling
19 Defendants consent to the entry of this Consent Decree in the form presented
20 without further notice.

21 37. If for any reason this Court should decline to approve this Consent
22 Decree in the form presented, this agreement is voidable at the sole discretion
23 of any party and the terms of the agreement may not be used as evidence in
24 any litigation between the Parties.

25 **XIX. SIGNATORIES/SERVICE**

26 38. Each undersigned representative of Settling Defendants to this
27 Consent Decree and the Assistant Attorney General for the Environment and
28 Natural Resources Division of the United States Department of Justice, or her

1 delegate, certifies that he or she is authorized to enter into the terms and
2 conditions of this Consent Decree and to execute and bind legally the party he
3 or she represents to this document.

4 39. Settling Defendants hereby agree not to oppose entry of this
5 Consent Decree by this Court or to challenge any provision of this Consent
6 Decree, unless the United States has notified Settling Defendants in writing
7 that it no longer supports entry of the Consent Decree.

8 40. Each Settling Defendant shall identify, on the attached signature
9 pages, the name and address of an agent who is authorized to accept service of
10 process by mail on behalf of such Settling Defendant with respect to all
11 matters arising under or relating to this Consent Decree. Each Settling
12 Defendant hereby agrees to accept service in that manner and to waive the
13 formal service requirements set forth in Rule 4 of the Federal Rules of Civil
14 Procedure and any applicable local rules of this Court, including, but not
15 limited to, service of a summons. The Parties agree that Settling Defendants
16 need not file an answer to the complaint in this action unless or until the Court
17 expressly declines to enter this Consent Decree.

18 **XX. FINAL JUDGMENT**

19 41. Upon approval and entry of this Consent Decree by the Court, this
20 Consent Decree shall constitute the final judgment between and among the
21 United States and Settling Defendants. The Court finds that there is no just
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1 reason for delay and therefore enters this judgment as a final judgment under
2 Fed. R. Civ. P. 54 and 58.

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4 Dated: _____

United States District Judge

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1 THE UNDERSIGNED PARTY enter into this Consent Decree in the
2 matter of United States v. Azusa Land Reclamation Co., Inc., et al., relating to
3 the BPOU Area.

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6 FOR THE UNITED STATES OF AMERICA

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13 Dated:_____

Kelly A. Johnson
Acting Assistant Attorney General
Environment and Natural Resources
Division
U.S. Department of Justice
Washington, D.C. 20530

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28 Dated:_____

Robert D. Mullaney
Trial Attorney
Environmental Enforcement Section
Environment and Natural Resources
Division
U.S. Department of Justice
301 Howard Street, Suite 1050
San Francisco, California 94105

1 THE UNDERSIGNED PARTY enter into this Consent Decree in the
2 matter of United States v. Azusa Land Reclamation Co., Inc., et al., relating to
3 the BPOU Area.

4 Dated:_____

5 Keith Takata
6 Director, Superfund Division
7 Region IX
8 U.S. Environmental Protection Agency
9 75 Hawthorne Street
10 San Francisco, CA 94105

11 Dated:_____

12 Lewis C. Maldonado
13 Assistant Regional Counsel
14 U.S. Environmental Protection Agency
15 Region IX
16 San Francisco, CA 94105

1 THE UNDERSIGNED PARTY enters into this Consent Decree in the
2 matter of United States v. Azusa Land Reclamation Co., Inc., et al., relating to
3 the BPOU Area.

4 FOR DEFENDANT AZUSA LAND RECLAMATION CO., INC.

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7 Dated: _____

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12 Agent Authorized to Accept Service on Behalf of Above-signed Party:

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1 THE UNDERSIGNED PARTY enters into this Consent Decree in the
2 matter of United States v. Azusa Land Reclamation Co., Inc., et al., relating to
3 the BPOU Area.

4 FOR DEFENDANT FAIRCHILD HOLDING CORP.

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7 Dated: _____

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12 Agent Authorized to Accept Service on Behalf of Above-signed Party:

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1 THE UNDERSIGNED PARTY enters into this Consent Decree in the
2 matter of United States v. Azusa Land Reclamation Co., Inc., et al., relating to
3 the BPOU Area.

4 FOR DEFENDANT HARTWELL CORPORATION

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7 Dated: _____

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12 Agent Authorized to Accept Service on Behalf of Above-signed Party:

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1 THE UNDERSIGNED PARTY enters into this Consent Decree in the
2 matter of United States v. Azusa Land Reclamation Co., Inc., et al., relating to
3 the BPOU Area.

4 FOR DEFENDANT OIL & SOLVENT PROCESS COMPANY

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7 Dated: _____

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12 Agent Authorized to Accept Service on Behalf of Above-signed Party:

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1 THE UNDERSIGNED PARTY enters into this Consent Decree in the
2 matter of United States v. Azusa Land Reclamation Co., Inc., et al., relating to
3 the BPOU Area.

4 FOR DEFENDANT REICHHOLD, INC., formerly known as REICHHOLD
5 CHEMICALS, INC.

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7 Dated: _____

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12 Agent Authorized to Accept Service on Behalf of Above-signed Party:

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1 THE UNDERSIGNED PARTY enters into this Consent Decree in the
2 matter of United States v. Azusa Land Reclamation Co., Inc., et al., relating to
3 the BPOU Area.

4 FOR DEFENDANT WINCO ENTERPRISES INC., formerly known as
5 WYNN OIL COMPANY
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7 Dated: _____
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12 Agent Authorized to Accept Service on Behalf of Above-signed Party:
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